

this processing prior to the stemming process, including the operations named in section 13(a)(14), may come within the exemption if they are otherwise qualified and if the tobacco on which they work is being processed for use as cigar wrapper tobacco.

§ 780.520 Particular operations which may be exempt.

(a) *General.* Section 13(a)(14) lists a number of operations as being included in the processing of shade-grown tobacco. Some of these are, and others are not, themselves “processing” in the sense that performance of the operations changes the natural form of the commodity on which it is performed. All of the operations named and described in paragraph (b) of this section, however, are a necessary and integral part of the overall process of preparing shade-grown tobacco for use as cigar wrapper tobacco and, when performed as part of that process and prior to stemming of the tobacco, by an employee qualified under the terms of the section, will provide the basis for his exemption from the minimum wage and overtime provisions of the Act.

(b) *Particular operations*—(1) *Drying.* Drying includes the removal or lowering of the moisture content of the tobacco, whether by natural means or by exposure to heat from ovens, furnaces, etc.

(2) *Curing.* Curing includes removing the tobacco to the curing shed or barn and stringing the tobacco over slats.

(3) *Fermenting.* Fermenting includes the operations controlling the chemical changes which take place in the tobacco as the result of bulking and rebulking.

(4) *Bulking.* Bulking includes piling the tobacco in piles or bulks of about 4,000 pounds each for the purpose of fermenting the tobacco.

(5) *Rebulking.* Rebulking includes the breaking down of the tobacco bulks or piles and rearranging them so that the tobacco on the inside will be placed on the outside of the bulk and tobacco on the outside will be placed inside.

(6) *Sorting.* Sorting includes segregation of the tobacco leaves in connection with the grading and classifying of the cured tobacco.

(7) *Grading.* Grading includes sorting or classifying as to size and quality.

(8) *Aging.* Aging includes the curing process brought about by bulking.

(9) *Baling.* Baling includes the tying of the tobacco into “hands” and placing them in bales for shipment.

§ 780.521 Other processing operations.

The language of the section, namely, “including, but not limited to,” extends the exemption for processing to include other operations in the processing of shade-grown tobacco besides those specifically enumerated. These additional operations include only those which are a necessary and integral part of preparing the shade-grown tobacco for use as cigar wrapper tobacco. These additional operations, like those enumerated in section 13(a)(14), must be performed before the tobacco has been stemmed. Stemming work and further work on the tobacco after stemming has been performed are nonexempt.

§ 780.522 Nonprocessing employees.

Only those employees who actually engaged in the growing and harvesting of shade-grown tobacco and the specified exempt processing activities are exempt. Clerical, maintenance and custodial workers are not included.

Subpart G—Employment in Agriculture and Livestock Auction Operations Under the Section 13(b)(13) Exemption

INTRODUCTORY

§ 780.600 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart G together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(13) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for certain employees who, in the same workweek, are employed by a farmer in agriculture and also in the farmer’s livestock auction operations. As appears

more fully in subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemptions provided in sections 13(a)(6) and 13(b)(12) of the Act for employees employed in agriculture are not discussed in this subpart except in its relation to section 13(b)(13). The meaning and application of these exemptions are fully considered in subparts D and E of this part 780.

§ 780.601 Statutory provision.

Section 13(b)(13) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

Any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1).

§ 780.602 General explanatory statement.

Ordinarily, as discussed in subparts D and E of this part 780, an employee who in the same workweek engages in work which is exempt as agriculture under section 13(a)(6) or 13(b)(12) of the Act and also performs nonexempt work to which the Act applies is not exempt in that week (§ 780.11). Employees of a farmer are not employed in work exempt as "agriculture" while engaged in livestock auction operations in which the livestock offered at auction includes livestock raised by other farmers (*Mitchell v. Hunt*, 263 F. 2d 913 (C.A. 5); *Hearnsberger v. Gillespie*, 435 F. 2d 926 (C.A. 8). However, under section 13(b)(13) an employee who is employed by a farmer in agriculture as well as in livestock auction operations in the same workweek will not lose the overtime exemption for that workweek, if certain conditions are met. These con-

ditions and their meaning and application are discussed in this subpart.

REQUIREMENTS FOR EXEMPTION

§ 780.603 What determines application of exemption.

The application of the section 13(b)(13) exemption depends largely upon the nature of the work performed by the individual employee for whom exemption is sought. The character of the employer's business also determine the application of the exemption. Whether an employee is exempt therefore depends upon his duties as well as the nature of the employer's activities. Some employees of the employer may be exempt in some weeks and others may not.

§ 780.604 General requirements.

The general requirements for exemption under section 13(b)(13) are as follows:

- (a) Employment of the employee "primarily" in agriculture in the particular workweek.
- (b) This primary employment by a farmer.
- (c) Engagement by the farmer in raising livestock.
- (d) Engagement by the farmer in livestock auction operations "as an adjunct to" the raising of livestock.
- (e) Payment of the minimum wage required by section 6(a)(1) of the Act for all hours spent in livestock auction work by the employee.

These requirements will be separately discussed in the following sections of this subpart.

§ 780.605 Employment in agriculture.

One requirement for exemption is that the employee be employed in "agriculture." "Agriculture," as used in the Act, is defined in section 3(f) as follows:

- (f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry,